

**REMARKS**

Favorable reconsideration of this application is respectfully requested in view of the claim amendments and following remarks.

**Status of Claims**

Claims 1-14 and 16-23 are currently pending in the application of which claims 1, 9, 13 and 18 are independent.

Claim 15 is canceled herein.

Claim 23 is new and recites features not disclosed by the prior art of record, and thus is believed to be allowable.

Claims 1-22 are rejected.

No new matter has been introduced by way of the amendments above. Support for the amendments is at least provided in paragraphs 20, 23, 25 and 26. Entry thereof is therefore respectfully requested.

**Summary of the Office Action**

Claims 1 and 2 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over NPL “Using Transaction Data for the Design of Sequential, Multi-Unit, Online Auctions” by Edieal J. Pinker et al. (hereinafter “Pinker”) in view of U.S. Patent No. 7,110,976 to Heimermann et al. (hereinafter “Heimermann”), and further in view of NPL “Specifying Rules for Electronic Auctions” by Peter R. Wurman et al. (hereinafter “Wurman”).

Claims 3-7 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Pinker in view of Heimermann, in view of Wurman, and further in view of NPL “A Probabilistic Approach to Automated Bidding in Alternative Auctions” by Marlon Dumas et al. (hereinafter “Dumas”).

Claim 8 was rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Pinker in view of Heimermann, in view of Wurman, and further in view of U.S. Patent Application Publication No. 2004/0006503 to Jarvis (hereinafter “Jarvis”).

Claims 9-13 and 18-21 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Pinker in view of Wurman, and further in view of Jarvis.

Claims 14, 16 and 17 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Pinker in view of Wurman, in view of Jarvis, in view of Dumas, and further in view of U.S. Patent No. 5,809,282 to Cooper et al. (hereinafter “Cooper”).

Claim 15 was rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Pinker in view of Wurman, in view of Jarvis, and further in view of Dumas.

Claim 22 was rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Pinker in view of Wurman, in view of Jarvis, and further in view of Heimermann.

The rejections above are respectfully traversed for at least the reasons set forth below.

#### Drawings

The Office Action did not indicate whether the formal drawings filed with the application are accepted. Indication of acceptance of the drawings is requested.

#### Claim Rejections Under 35 U.S.C. §103(a)

The test for determining if a claim is rendered obvious by one or more references for purposes of a rejection under 35 U.S.C. § 103 is set forth in *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398, 82 USPQ2d 1385 (2007):

“Under § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background the obviousness or nonobviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented.” Quoting *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1 (1966).

As set forth in MPEP 2143.03, to ascertain the differences between the prior art and the claims at issue, “[a]ll claim limitations must be considered” because “all words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385. According to the Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in view of *KSR International Co. v. Teleflex Inc.*, Federal Register, Vol. 72, No. 195, 57526, 57529 (October 10, 2007), once the *Graham* factual inquiries are resolved, there must be a determination of whether the claimed invention would have been obvious to one of ordinary skill in the art based on any one of the following proper rationales:

(A) Combining prior art elements according to known methods to yield predictable results; (B) Simple substitution of one known element for another to obtain predictable results; (C) Use of known technique to improve similar devices (methods, or products) in the same way; (D) Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results; (E) “Obvious to try”—choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success; (F) Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations would have been predictable to one of ordinary skill in the art; (G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art

reference or to combine prior art reference teachings to arrive at the claimed invention. *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398, 82 USPQ2d 1385 (2007).

Furthermore, as set forth in *KSR International Co. v. Teleflex Inc.*, quoting from *In re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006), “[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasonings with some rational underpinning to support the legal conclusion of obviousness.”

Therefore, if the above-identified criteria and rationales are not met, then the cited reference(s) fails to render the claims obvious and, thus, the claims are distinguishable over the cited reference(s).

#### **Claims 1 and 2**

Claims 1 and 2 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Pinker in view of Heimermann, and further in view of Wurman.

Independent claim 1 has been amended to recite,

wherein the simulating comprises:

- identifying a set of potentially profitable lots for each bidder based on current simulated bid prices;
- determining first and second utilities for each potentially profitable lot for each bidder wherein the first and second utilities are calculated as a function of a variable representing the bidder’s aversion to risk, and the first utility is for a set of the profitable lots the bidder is currently winning and the second utility is for a set of the profitable lots the bidder will win if bids for the set are accepted;
- calculating a utility gain value based on a difference between the first and second utilities; and
- accepting bids for lots from the multiple lot auction based on the utility gain value.

The rejection alleges Pinker discloses simulating auctions. However, Pinker does not disclose accepting bids according to the steps described above. Heimermann and Wurman also do not disclose these features. Thus, claims 1 and 2 are believed to be allowable.

#### **Claims 3-7**

Claims 3-7 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Pinker in view of Heimermann, in view of Wurman, and further in view of Dumas. Claims 3 and 7 are believed to be allowable at least for the reasons claim 1 is believed to be allowable.

#### **Claim 8**

Claim 8 was rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Pinker in view of Heimermann, in view of Wurman, and further in view of Jarvis. Claim 8 is believed to be allowable at least for the reasons claim 1 is believed to be allowable.

#### **Claims 9-13 and 18-21**

Claims 9-13 and 18-21 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Pinker in view of Wurman, and further in view of Jarvis.

Independent claims 9, 13 and 18 have been amended to recite features similar to claim 1 described above. Pinker and Wurman do not disclose these features. Jarvis was cited as allegedly disclosing metrics for each simulated auction. However, Jarvis does not disclose simulated auctions. Jarvis, instead, discloses a cost model for commodities. Thus, Jarvis also

does not disclose the features of claim 1 described above. Accordingly, claims 9-13 and 18-21 are believed to be allowable.

**Claims 14, 16 and 17**

Claims 14, 16 and 17 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Pinker in view of Wurman, in view of Jarvis, in view of Dumas, and further in view of Cooper. Claims 14, 16 and 17 are believed to be allowable at least for the reasons claim 9 is believed to be allowable.

**Claim 15**

Claim 15 was rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Pinker in view of Wurman, in view of Jarvis, and further in view of Dumas. Claim 15 is believed to be allowable at least for the reasons claim 13 is believed to be allowable.

**Claim 22**

Claim 22 was rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Pinker in view of Wurman, in view of Jarvis, and further in view of Heimermann. Claim 22 is believed to be allowable at least for the reasons claim 18 is believed to be allowable.

Conclusion

In light of the foregoing, withdrawal of the rejections of record and allowance of this application are earnestly solicited. Should the Examiner believe that a telephone conference with the undersigned would assist in resolving any issues pertaining to the allowability of the above-identified application, please contact the undersigned at the telephone number listed below. Please grant any required extensions of time and charge any fees due in connection with this request to Deposit Account No. 08-2025.

Respectfully submitted,

Dated: May 16, 2011

By

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